
(1957) 08 MP CK 0007

In the Madhya Pradesh High Court

Case No : Second Appeal No. 106 of 1953

Ramrao Krishnarao

APPELLANT

Vs

Shivgovind Pranprasad and Others

RESPONDENT

Date of Decision : 27-08-1957

Acts Referred:

Madhya Bharat Muafi and Inam Tenants and Sub-tenants Protection Act, 1954 —
Section 3, 4
Transfer of Property Act, 1882 — Section 105

Citation : AIR 1958 MP 41

Hon'ble Judges : Nevaskar, J;Dixit, J

Bench : Division Bench

Advocate : G.M. Chaphekar, P.R. Sharma, for the Appellant; S.L. Dubey, for the Respondent

Judgement

Dixit, J.—This is a reference made to us by a single Judge in a second appeal arising out of a suit, for ejectment of the respondents from certain. Inam lands situated in Indore. The question referred to us for opinion is in substance whether the heirs of a deceased tenant of Inam, lands, whose tenancy came to an end by efflux of the time limited thereby, are tenants or ordinary tenants for the purposes of Sections 3 and 4 of the Madhya Bharat Muafi and Inam Tenants and Sub-tenants Protection Act, 1954.

2. The question arises thus. The appellant instituted a suit against Shivgovind for ejectment from Inam lands in suit, arrears of rent and mesne profits on the allegation that the lands in question belonging to him were first leased out to the defendant for Fasli year 1357; that they were again leased out to him for the Fasli year 1358; that the defendant remained in arrears of rent and that thereupon he gave a notice to the defendant on 29th May 1949, to vacate the land at the end of the year, but that he failed to do so and continued in possession.

On these allegations, the plaintiff claimed ejectment, Rs. 575 as arrears of rent

and Rs. 1,062 as mesne profits. The defendant resisted the suit on various grounds, namely, that he was not in default in the payment of rent, that he had made improvements on the land, and that the notice to quit was illegal. The City Civil Judge, Indore, who tried the suit, held that the lease was for a fixed term which terminated by efflux of time; that the notice for ejectment given on 29th May 1949, by the plaintiff was merely by way of intimation; and that it was legal.

Accordingly, he gave to the plaintiff a decree for ejectment and for the recovery of arrears of rent and mesne profits. In appeal, the Additional District Judge of Indore took the view that the lease was from year to year and that though Section 106, Transfer of Property Act, did not apply to agricultural leases, yet on general principles a reasonable notice to The plaintiff then preferred a second appeal in the Madhya Bharat High Court. After the ruling of the appeal, the original defendant Shivgovind died and his legal representatives, who are the respondents in this appeal, were brought on record. The appeal was heard by my learned brother Nevaskar, J., and even disposed of on 28th November 1955, by setting aside the decision of the Additional District Judge of Jnaore and decreeing the plaintiff's claim in full on the finding that Shivgovind's tenancy was for a year and came to an end by efflux of time.

It appears that during the pendency of the appeal the respondents had filed an application on 27th January 1955, praying that the hearing of the appeal be stayed under Sections 3 and 4 of the Madhya Bharat Muafi and Inam Tenants and Sub-tenants Protection Act, 1954. This application remained to be considered through some inadvertence. The respondents, therefore, filed a petition for a review of the decision of my learned brother pronounced on 28th November 1955. The learned single Judge granted the review petition and made an order -

"I shall proceed to hear the proceeding of review of the decision in the appeal. If the application dated 27th January 1955, is held to be well-grounded, the decision will be set aside and the proceedings of appeal will be stayed; but if it is held to be groundless, the decision would be made absolute."

It was during the hearing of this application for stay u/s 3 of the Act that the question formulated for our opinion was raised.

3. Before dealing with the question it is necessary to refer to the provisions of the Madhya Bharat Muafi and Inam Tenants and Sub-tenants Protection Act, 1954. The Act was enacted to provide for temporary protection of tenants or ordinary tenants, sub-tenants, Muafidars, Inamdars, etc., against their eviction and for the stay of suits and other proceedings relating to such eviction. It came into force on 15th December 1954, and was to be operative for two years. The Act was, however, amended in 1956 and its duration was extended to four years. Section 2(ii) gives the definition of the words "tenant, sub-tenant, ordinary tenant and rent". It says -

"The terms "tenant", "sub-tenant", "ordinary tenant" and "rent" have the same meaning as is assigned to them in Sub-sections (1), (7), (8) and (9) of Section

54 of the Madhya Bharat Land Revenue and Tenancy Act, Samvat 2007."

Section 3 reads as follows:--

""During the continuance of this Act, but subject to the provisions contained in Sections 4 and 5 no Inam land tenant, sub-tenant or ordinary tenant shall be evicted from his land nor shall he be required to pay rent higher than what he was paying in the agricultural year ending 30th June 1948."

Section 4 provides --

"All suits, proceedings in execution of decrees or orders and other proceedings for the eviction of Inam land tenants, sub-tenants or ordinary tenants from Inam lands, or in which a claim for such eviction is involved, whether in addition to a claim for rent or not, which are pending in the Court at the commencement of this Act or which may be instituted after such commencement, shall stand stayed subject to the provisions contained in the following sub-section;

.. .. .""

The Madhya Bharat Revenue Administration and Ryotwari Land Revenue and Tenancy Act, Samvat 2007, gives the definition in Section 54 of the term "Ordinary Tenant" as follows:--

"Ordinary tenant means a tenant other than a Pakka tenant and shall not include a sub-tenant."

4. It will be seen that the benefit of the provisions of Sections 3 and 4 is available only to tenants, sub-tenants or ordinary tenants. It is important to note here that the question as to the scope of enquiry under those provisions as to whether a person is or is not tenant, subtenant or ordinary tenant, or as to the material on which a person's status should be determined, has not been referred to us for decision.

This is clear from the order of reference and particularly from the observations of the learned single Judge therein that "a person who claims protection must make out that he has a right to do so; and if this depends upon his status as an ordinary tenant or even an ex-ordinary tenant this has to be found before the jurisdiction to proceed with the hearing of the appeal is to be obstructed. It is open for the Civil Court to examine whether the conditions under the Special Act entitling protection do exist or not. This Court has already examined that position and held that Shivgovind's tenancy had come to an end by the efflux of time."

As I read these observations it seems to me that the learned single Judge has already held that the question as to whether the respondents are or are not tenants or ordinary tenants must first be determined before coming to a decision u/s 4 as to stay of the hearing of the appeal. In any case, if that question is not concluded by the above observations, it cannot be gone into here when it has not been referred to us for opinion. In that event it can be raised only before the single Bench.

5. For the purposes of this reference, it must be assumed that Shivgovind was a tenant of the plaintiff and that his tenancy had expired by efflux of time. The question that we have to consider in this reference then is: whether when the tenancy had terminated the heirs of Shivgovind who entered after his death could be said to be tenants or ordinary tenants within the meaning of Sections 3 and 4 of the Act.

On this point the argument of Mr. Chafekar, learned counsel for the appellant, was that the tenancy was not heritable; that it came to an end long before the death of Shivgovind; that, therefore, Shivgovind, who was a tenant on sufferance, having no title to the land at the time of his death could convey none to his heirs; that as he died before the enactment of the Madhya Bharat Muafi and Inam Tenants and Sub-tenants Protection Act, 1954, he had no right of any kind under the Act which his heirs could claim to have vested in them on his death; and that, therefore, the respondents, who were neither tenants or ordinary tenants nor even ex-tenants, but mere trespassers, could not claim the protection of Sections 3 and 4 of the Act.

Learned counsel relied on the decisions reported in *Adimulam v. Pir Ravuthan* ILR 8 Mad 424 (A); *Vadapalle Narasimham v. Dronamraju* ILR 31 Mad 163 (B); *Kantheppa Reddi v. Sheshappa* ILR 22 Bom 893 (C); (*Hasanali v. Dara Shah* ILR (1948) Nag 922: (AIR 1943 Nag 232) (D), in support of the proposition that if a tenant on sufferance dies and his representative enters and holds, he holds as a trespasser.

6. In my judgment, the contention of the learned counsel for the appellant must be accepted. A plain reading of the Act shows that the object of Sections 3 and 4 is to give temporary relief against ejectment to those who are tenants or sub-tenants or ordinary tenants at the commencement of the Act. As the question of ejectment of a tenant arises when the tenancy has terminated, Sections 3 and 4 are primarily intended to protect, albeit temporarily, the possession of a tenant who has ceased to be a tenant.

This is obvious enough on the application of the reasoning given in the order of reference in the case of *Bhagwandas v. Ramchandra*, Madh B LJ 1954 HCR 616 (FB) (E), where it has been held that a person continuing in possession after the termination of the tenancy in his favour by effluxion of time, by an act of the landlord, or by his own act or default, is a tenant within the meaning of the word "tenant" as defined in Madhya Bharat Sthan Niyamtrana Vidhan.

If a person continuing in possession after the termination of the tenancy or sub-tenancy in his favour is not a tenant or a sub-tenant within the meaning of the terms as used in Sections 3 and 4, then there would remain no person to be benefited by those provisions and they would become purposeless. A distinction must, however, be drawn between an erstwhile tenant and a trespasser.

An ex-tenant, though he may not have a right to continue in possession after the termination of the tenancy, his possession is juridical in its inception and it is that

juridical possession which is protected by Sections 3 and 4 of the Act. On the other hand, a trespasser's possession is never juridical and never protected by law. Sections 3 and 4 are not intended and do not profess to benefit trespassers.

7. Now, in the instant case, the tenancy in favour of Shivgovind was clearly not a heritable interest passing on his death to his heirs. The tenancy came to an end by efflux of time during the life-time of Shivgovind. He had, therefore, at the time of his death no title to the land which his heirs, could inherit. If, therefore, after the death of Shivgovind his heirs continued in possession of the land, their possession was no more than that of trespassers.

This view finds support in the decisions cited by the learned counsel for the appellant, in ILR Mad 424 : ILR 31 Mad 163 (B) and ILR 22 Bom 893 (C), the principle that the representative of a tenant on sufferance who enters and holds on after his death, holds as a trespasser was applied in the construction of Article 139 of the Limitation Act.

The decision in ILR 31 Mad 163 (B) was doubted in Subraveti Ramah v. Ramanni ILR 33 Mad 260 (F). But what was doubted was not the principle itself but its applicability in construing Article 139 of the Limitation Act. In AIR 1949 282 (Nagpur) , it was held by a Division Bench of this Court that where a tenant continues in possession after the termination of the tenancy, without the consent of the landlord, he is a tenant on sufferance and no better than a trespasser. If, therefore, a tenant on sufferance is a trespasser, then it follows that on his death his representatives are also trespassers.

The decision in AIR 1949 282 (Nagpur) places beyond doubt the status of respondents as trespassers in possession of the land after the death of Shivgovind. Now, a tenant on sufferance being a trespasser is under the law liable to ejectment. He cannot de hors any special Act or special provisions like Sections 3 and 4 of the Act, claim any protection against ejectment.

The respondents cannot, therefore, say that merely by virtue of their being heirs of a tenant on sufferance they have a right to remain on the land. They cannot also claim the protection given by Sections 3 and 4 of the Act to a tenant on sufferance, the reason being that Shivgovind having died before the Madhya Bharat Muafi and Inam Tenants and Subtenants Protection Act, 1954, was enacted, himself had no vested right of protection which could be said to have devolved on his heirs after his death.

8. Learned counsel appearing for the respondents, did not dispute this legal position. He, however, contended that for the purpose of applying Section 3 or Section 4 of the Act all that one had to do was to see whether the suit or proceedings described in Sections 3 and 4 of the Act were such in which a claim for eviction of a tenant, sub-tenant or ordinary tenant from Inam lands was involved, and that it was not necessary to ascertain whether the defendant was in fact a tenant, sub-tenant, ordinary tenant or an ex-tenant, or whether his tenancy had been determined.

As I have said earlier, this contention cannot be entertained in tin's reference which is for answering a specific question of law in the context of the facts and circumstances stated by the referring Judge in his order of reference.

The whole case has not been referred to us for decision.

9. I would, therefore, answer the reference by saying that the heirs of a tenant of Inam lands, whose tenancy came to an end by efflux of time and who died before the enactment of the Madhya Bharat Muafi and Inam Tenants and Sub-tenants Protection Act, 1954, are not tenants, or ordinary tenants, or ex-tenants for the purposes of Sections 3 and 4 of the Act.

Nevaskar, J.

10. I agree.